

April 13, 2017

By Electronic Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Business Data Services In an Internet Protocol Environment;
Special Access For Price Cap Local Exchange Carriers,
WC Docket No. 16-143, WC Docket No. 05-25, RM-10593*

Dear Ms. Dortch:

Alaska Communications, by its undersigned counsel, submits these supplemental comments in the above-captioned proceeding, and respectfully requests that they be made part of the record in this proceeding. In particular, Alaska Communications supports proposals for deregulation of interstate special access or business data services (“BDS”),¹ including the deregulatory direction of the Commission’s recently released Draft Order.² Unfortunately, the 2013 Special Access Data Collection (“SADC”) failed to capture evidence of vigorous real-world competition that exists in many Alaska boroughs (analogous to counties). Although the competitive market test (“CMT”) is laudable in some respects, the Draft Order’s reliance on the incomplete information collected in the SADC means that the CMT will produce false results for Alaska. Therefore, it could leave in place anticompetitive and obsolete regulatory burdens in the state that create economic inefficiency, discourage investment, and harm the public interest.

Alaska Communications believes that the substantial weight of evidence in the record supports *full deregulation* of the price cap incumbent local exchange carrier (“ILEC”) in all Alaska price cap markets. If any entity should be regulated, it is General Communication, Inc., which

¹ In recent weeks CenturyLink and Frontier requested that the Commission declare all price cap ILECs to be non-dominant in all BDS offerings. Letter from Russell Hanser & Brian Murray on behalf of CenturyLink, Inc. & Frontier Communications Corp. to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed March 20, 2017) (“CTL-FTR Proposal”).

² Draft order and fact sheet available at:

http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0330/DOC-344162A1.pdf
(last viewed on April 13, 2017) (the “Draft Order”).

operates the state's largest network of long-haul, interexchange terrestrial fiber middle mile transport on a monopoly basis, not Alaska Communications.

I. The CMT Will Fail In Alaska Unless Accurate Alaska-Specific Data Are Used

Alaska Communications applauds the overall direction embodied in the Draft Order. According to the Draft Order, with respect to channel terminations for DS1/DS3 services, all business locations in a borough (county) will be deemed competitive where *either* 50 percent of the locations in that borough (county) with last-mile BDS demand are within one-half mile of a location served by a competitor, *or* 75 percent of the census blocks in that borough (county) have a cable provider “present” according to Form 477 data.³ The Draft Order states that this test takes into account “the availability of actual and likely competitive options.”⁴ The Draft Order states that a wireline service provider will be considered an effective competitor if it “either delivers BDS to a location or has a network within one half mile of the location with BDS demand” because such a nearby competitive presence is sufficient to discipline the market.⁵

It is appropriate to relieve packet-based services and high-bandwidth TDM-based services from regulation, as these are some of the most competitive offerings of an ILEC. However, with respect to Alaska, the Draft Order does not go far enough, and a key cause is the incomplete and inaccurate data employed by the Commission to evaluate competition in the state.

Alaska Communications has been active in this proceeding throughout its various stages. In response to the Commission's Further NPRM,⁶ requesting proposals to identify where BDS market power exists (and where it does not) in areas served by price cap carriers, Alaska Communications filed Comments and Reply Comments that documented the intense competition in its Anchorage, Fairbanks and Juneau study areas, for both higher-bandwidth services and for DS1/DS3 offerings. Alaska Communications made the case for deregulation of BDS in those markets based on detailed evidence placed in the record.⁷ Alaska Communications demonstrated

³ Draft Order ¶84.

⁴ Draft Order ¶92.

⁵ This language suggests that the competitor need only have facilities in place, not that it must be presently serving a customer. Draft Order ¶113. Elsewhere, however, the Draft Order states that a nearby location must actually “be served” by a competitor. *Cf. id.* ¶126. The Commission should clarify that a facilities-based presence is sufficient regardless of customer subscribership at any particular point in time.

⁶ *Business Data Services In An Internet Protocol Environment*, WC Docket No. 16-143 *et al.*, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54, ¶11 (rel. May 2, 2016).

⁷ *Business Data Services In an Internet Protocol Environment, et al.*, WC Docket Nos. 16-143, 05-25, RM-10593, Comments of Alaska Communications (filed June 28, 2016) (“ACS Initial Comments”); Reply Comments of Alaska Communications (filed August 9, 2016) (“ACS Reply Comments”). *See also* Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Aug. 23,

how the SADC failed to capture complete and accurate information about Alaska's BDS market, in particular under-counting the BDS facilities of General Communication, Inc. ("GCI"), Alaska's largest telecommunications service provider, as well as the BDS market presence of other providers such as AT&T and Verizon.⁸

The Draft Order does not correct these omissions. While the CMT appears to be reasonably designed for general purposes (with some Alaska-specific exceptions noted below), the *inputs* to the CMT are equally important – bad data in, bad data out, as the saying goes. By limiting input to data collected in the SADC and FCC Form 477, the FCC appears poised to grossly *underestimate* competition in Anchorage, Fairbanks, Juneau and other Alaska markets. For example, reevaluating the information Alaska Communications previously gathered concerning the facilities, customers and service terms of the known BDS providers, on a *borough-by-borough* basis, as the CMT set forth in the Draft Order would do, Alaska Communications concludes that all of the Anchorage, Juneau, and Fairbanks-North Star boroughs should be deemed competitive, as well as (at a minimum) the Kenai Peninsula, Kodiak Island and Sitka boroughs.



Boroughs and Census Areas of Alaska, source: https://en.wikipedia.org/wiki/List_of_boroughs_and_census_areas_in_Alaska.

Alaska Communications is not confident the CMT will produce similar results, however, because the SADC and Form 477 data fail to capture so much of the actual competitive facilities

2016).

⁸ E.g., ACS Reply Comments at 3-8 & 15-18; Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016).

deployed and competitive BDS penetration in the state. No matter how well-designed the CMT may be, it simply cannot produce just results with such flawed inputs.

II. It Is Unclear How the FCC Intends to Apply the CMT At the Borough Level

The CMT has another critical flaw as it applies to Alaska. Some parts of Alaska (including the more populous areas as well as some very remote and sparsely populated areas) are organized into “boroughs,” while the remainder – comprising the 55 percent of the land area – are designated “REAs” (regional educational attendance areas) often recognized collectively as the “unorganized borough.” (The “unorganized borough” encompasses all of the yellow-shaded areas on the map shown above.)

One borough is not necessarily akin to any other borough in size, population density, access to infrastructure such as roads and electricity, or any other characteristic. The Municipality of Anchorage borough (the only truly urban community in Alaska) includes some 300,500 residents and 1,900 square miles, while the Matanuska-Susitna borough includes 98,000 people spread across 25,000 square miles, the North Slope Borough has approximately 10,000 residents and covers nearly 95,00 square miles (larger in area than 40 states), and the borough of Denali comprises just 1,785 souls across 12,600 square miles largely unreachable by roads or the electric grid.⁹ The “unorganized borough” covers approximately 55 percent of the land area of Alaska, including massive portions of the interior of the state, and the tiny islands of Saint Paul and Saint Matthew in the Bering Sea. Significant portions of Alaska Communications’ price cap ILEC service territory are found in the unorganized borough.

It is unclear whether the Commission intends to evaluate BDS competition at the borough level in Alaska, or how the Commission will approach the unorganized borough and all of the price cap service areas within it.

For the reasons stated below, and in prior filings in this proceeding, Alaska Communications believes that the Alaska price cap ILECs should be found non-dominant for *all* special access services, including DS1/DS3 services, throughout each study area. Such an approach would be more rational than a borough-by-borough analysis.

III. The Price Cap Carrier Should Be Deregulated Throughout the State

As the Commission is aware, more than 90 percent of buildings served by price cap ILECs have access to (are within one-half mile of) at least one competitive fiber transport provider.¹⁰ This is no less true in Alaska. Indeed, Alaska Communications has thoroughly documented the known facilities of GCI, and it is highly likely that GCI has extended its fiber-based and terrestrial microwave-based facilities even farther.

⁹ See State of Alaska Dept. of Commerce, Community and Economic Development, “Communities and Regions of Alaska,” available at:

<https://www.commerce.alaska.gov/web/portals/4/pub/crmap.pdf?ver=2017-02-17-125029-363>

¹⁰ Draft Order ¶ 88.

As noted by others, cable-provisioned BDS – whether utilizing hybrid fiber-coax plant or other technology – is capable of delivering services that directly compete with ILEC fiber and fiber-copper plant.¹¹ GCI widely publicizes its superior speeds and coverage in Alaska Communications’ service areas.¹² Whether or not GCI has deployed last-mile fiber to an enterprise customer, it has (according to its public statements) upgraded its head-ends to make Metro Ethernet capability widely available, and GCI is the dominant provider of BDS throughout the state, including with products that are comparable to DS1 and DS3 service.¹³ There is no evidence in the record suggesting that customers view GCI’s offerings as anything but a substitute for those of the ILEC.¹⁴

Where GCI is a competitor to the ILEC, competition is fierce.¹⁵ GCI far outstrips Alaska Communications in total BDS revenue, allowing it to undercut the incumbent on price and invest in additional facilities.¹⁶ And, just like the ILEC, GCI offers service-level agreements to BDS customers – indeed, GCI has far greater flexibility to negotiate prices and other terms because it is not restricted by price cap regulation.¹⁷

It is uncontroverted that GCI has not disclosed all of its Ethernet-capable head-ends to the FCC. Both the passage of time since 2013 (the year for which special access data was collected)¹⁸ and the failure of the Commission under Chairman Wheeler to require GCI to provide a complete data set have set up the CMT for failure where Alaska is concerned. The Commission has no justification to impose regulation on Alaska Communications based on incomplete and inaccurate information collected in the SADC.¹⁹ Even where GCI may not be serving a customer today, it has the *ability* to deploy last-mile facilities to virtually *any customer of Alaska Communications* upon request.

¹¹ E.g., CTL-FTR Proposal at 13 (“DOCSIS 3.1-enabled cable modem service offers downstream speeds of 10 Gbps – some 200 times the 45 Mbps offered over a DS3 connection”).

¹² See ACS Reply Comments at 5 (“FCC Form 477 data shows that GCI can reach many times more census blocks than ACS with data speeds exceeding 50 Mbps”), *citing* Declaration of David Blessing at 11.

¹³ See ACS Reply Comments at 4-5, *citing* Declaration of David Blessing at 10.

¹⁴ *Accord*, CTL-FTR Proposal at 14-15.

¹⁵ E.g., ACS Initial Comments, Declaration of David Eisenberg at 3-4 (noting the sophistication of BDS customers and the importance of service quality in negotiations in Alaska).

¹⁶ ACS Reply Comments, Declaration of David Blessing at 7-23.

¹⁷ See, e.g., Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Declaration of Bill Bishop ¶¶3-8. *Accord*, CTL-FTR Proposal at 14.

¹⁸ Indeed, the Draft Order acknowledges that competition has intensified, not diminished, since 2013 because additional competitive fiber facilities have been deployed since then. Draft Order ¶89.

¹⁹ Alaska Communications has demonstrated numerous errors and omissions in the Alaska data, including failure to capture BDS capability where GCI has Ethernet-capable head-ends, failure to capture competition from DOCSIS-based technology, and gross disparities between GCI’s capability (as publicly reported) and that of the ILEC. ACS Reply Comments at 4-6.

Alaska Communications alone has supplemented the record in this proceeding with hard numbers demonstrating that: BDS prices throughout Alaska are falling, not rising;²⁰ Alaska Communications' tariffed DS-1 and DS-3 rates are already lower in Alaska than in most other price cap study areas;²¹ and the ILEC has a smaller market share than the competition, not only in the largest markets but in all regions.

Since the release of the Draft Order, Alaska Communications has reviewed more recently available data and updated its analysis of the degree of competition in its price cap territories. Not only do all of the above conclusions remain valid, but if there has been any change at all, the markets have grown to be even more dominated by GCI. For example, based on the CMT announced in the Draft Order, Alaska Communications has specifically analyzed where a competitor has a facilities-based presence in some of Alaska's less urban boroughs, such as the Kenai Peninsula, Kodiak Island, and Sitka. The competitor may, for example, have a customer supported by either E-Rate or the Rural Health Care ("RHC") universal service program. The competitor may have constructed facilities under some other program or mechanism with some measure of public oversight. Through these examples, Alaska Communications has been able to find persuasive evidence that the market share and facilities-based presence of competitive service providers has only grown in the last few years.

E-Rate and RHC Commitments and Disbursements (2015-16):

Competitive Service Providers In Selected Alaska Boroughs Where ACS ILEC Provides Local Service

Borough	E-rate Applicants	E-rate Commitment Dollars	RHC Awards	RHC Estimated Support	# of E-rate and RHC Service Providers	Service Provider Names
Kenai	34	\$1,303,669	69	\$3,926,923	5	ACS, GCI, TelAlaska, Alascom, MTA
Kodiak	16	\$2,269,116.55	30	\$4,894,455.03	4	ACS, GCI, TelAlaska, Alascom
Sitka	6	\$279,685.56	13	\$2,756,894.88	3	ACS, GCI, Alascom

A break-down of each provider's share of E-rate and RHC applications tells a similar story: that competitors have penetrated these markets in strong and irreversible fashion.

²⁰ *Id.*, Declaration of Bill Bishop at 3.

²¹ *Id.*, Supplemental Declaration of David Blessing at 12 and Attachment 2.

**E-Rate and RHC Commitments and Disbursements (2015-16):
Selected Alaska Boroughs Where ACS ILEC Provides Local Service
Applications Broken Down By Telecom Service Provider**

Service Provider	Kenai	Kodiak	Sitka	Total
Alaska Communications	56	21	10	87
GCI	38	18	9	65
TelAlaska	5	1	0	6
Alascom	3	6	1	10
MTA	1	0	0	1
Total	103	46	20	169

Accordingly, it would be arbitrary and capricious for the FCC to impose BDS regulation in any parts of Alaska Communications' study areas considering the extensive record demonstrating that BDS is competitive in each of those study areas, and that Alaska Communications lacks market power in any region, including the rural areas it serves.²² There simply can be no justification, based on data that are obviously and demonstrably incomplete, to continue regulation of the ILEC's special access services in the Alaska price cap study areas.

IV. The Commission Overlooks the Real Bottleneck In Alaska: Middle Mile Facilities

The Commission readily could and should provide relief from outmoded BDS regulation in Alaska's price cap service areas, where competition demonstrably has taken hold. However, the Commission continues to overlook one aspect of BDS – and broadband services more broadly – that beg for FCC intervention: That is the middle-mile component.

To the extent that customers in some of Alaska's BDS markets may still lack competitive alternatives, Alaska Communications has observed, it is a rate-of-return carrier or other service provider, not the price cap ILEC, that has market power and therefore should be regulated.²³ In particular, Alaska Communications has extensively documented the more intractable problem of the dearth of competitive *middle mile* (inter-exchange) facilities on many routes linking remote areas, where the dominant provider is not the price cap ILEC but a much larger, and typically unregulated, monopoly operator.²⁴

²² Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Declaration of Beth Barnes at 3-4.

²³ ACS Initial Comments at 14-18; ACS Reply Comments at 25-26.

²⁴ ACS Initial Comments at 18-25; ACS Reply Comments at 11-24; Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Supplemental Declaration of David Blessing at 14.

The middle mile sector in Alaska is dominated by two inter-exchange carriers (“IXCs”), but only one of these, GCI, is also a fixed broadband services competitor at the local level, giving it strong incentives to discriminate against other ILECs. Moreover, GCI is superior to the ILEC in market capitalization, purchasing power, number of subscribers, route fiber miles, efficiencies of scale, and virtually all other relevant measures,²⁵ giving it the ability as well as the incentive to profit from its monopoly middle mile facilities. In this environment, it is doubly harmful to continue regulating the price cap ILEC as if it were dominant while ignoring the market failure in the middle mile sector.

Broadband capability in any market depends on not only last-mile capacity and advanced switching/routing/storage capability but also the connection from the local serving area to the Internet cloud. In Alaska, that connection is not even located in the state but must travel from Anchorage or Juneau to Seattle or Portland. While Anchorage, Fairbanks, Juneau and a handful of smaller communities are linked by fiber to the networks that link Alaska to these Internet access points, most communities within the interior of Alaska are not. They depend on hundreds of miles of inter-office transport typically not under the control of the ILEC. To enable broadband in Alaska, ILECs must purchase *middle mile* transport, an essential facility, from the two largest IXCs in the state, AT&T and GCI.

Unlike price cap ILECs serving the contiguous United States, the price cap carrier in Alaska lacks inter-office transport facilities connecting most of the exchanges it serves as the ILEC.²⁶ BDS in these exchanges often is dependent upon one of the two facilities-based IXCs that connect these communities to the rest of the world. One of those, GCI, also is an ILEC in a number of markets as well as a competitive local exchange carrier (“CLEC”) in many Alaska Communications price cap markets. Alaska Communications has demonstrated that GCI’s middle mile pricing is above competitive market rates.²⁷

Recent studies continue to bear out the conclusion that GCI has been raising prices for middle mile transport in Alaska even while ILEC BDS prices have been falling.²⁸ For example, GCI controls the only undersea fiber optic cable linking Anchorage to Kodiak island.²⁹ In recent years, GCI has increased the rates it charges Alaska Communications for a large-capacity circuit

²⁵ See Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Declaration of Bill Bishop & Declaration of Beth Barnes, Supplemental Declaration of David Blessing at 11.

²⁶ Alaska Communications, for example, is the ILEC in 49 “Bush” communities where the local serving office typically is not connected to other facilities of the ILEC by fiber or other inter-office or “middle mile” facilities within the control of the ILEC.

²⁷ Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Supplemental Declaration of David Blessing.

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²⁹ A description of the Kodiak-Kenai Fiber Link may be found at:

<http://www.insworldwide.com/project/kkfl/>

to Sitka, even while the special access and other BDS retail rates of both GCI and Alaska Communications have fallen.³⁰ Today, Alaska Communications is capacity-constrained on that route. GCI's conduct has prevented Alaska Communications from improving, not only its BDS offerings, but also its retail broadband Internet access service in this region, because GCI has raised the cost of the middle-mile input above the level where Alaska Communications would be able to offer those services at competitive and affordable retail rates and earn a reasonable margin. This is a classic price squeeze which harms competition and disserves customers.

In short, it is irrational to permit the IXC, the real dominant provider, often the monopoly provider, to offer BDS without any regulation while the same carrier exerts a price squeeze on competing ILECs.

V. Conclusion

Alaska Communications applauds the overall direction embodied in the Draft Order. Regulatory restraint in the current, highly competitive climate will further the public interest by encouraging investment by ILECs and competitors, and allowing the market to function without unnecessary regulatory interference, giving consumers far greater negotiating power and choice, and eliminating unnecessary costs for both the industry and the Commission. FCC regulation should keep pace with the rapidly evolving BDS market, especially in Alaska, where competition at the local level is fierce, and outmoded regulation has hampered choice and facilities investment. The market demands relief from all price regulation for DS1 and DS3 services as well as higher-bandwidth offerings. If any entity should be regulated, it is the monopoly *middle mile* provider serving the state's interior.

Respectfully submitted,



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³⁰ For examples of falling prices in the Alaska price cap markets over the period 2011 to 2016, see Letter from Karen Brinkmann, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed Sept. 2, 2016), Declaration of William Bishop at 2-3. Examples of recent price quotes on the Sitka circuit are being filed today under confidential seal. See Letter from Richard Cameron, Counsel to Alaska Communications, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 16-143, 05-25, RM-10593 (filed April 13, 2017).